

FILED

UNITED STATES COURT OF APPEALS

FEB 07 2005

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAX CLARK TANNER,

Defendant - Appellant.

No. 02-10661

D.C. No. CR-00-00193-KJD

District of Nevada, Las Vegas

ORDER

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

MAX CLARK TANNER,

Defendant - Appellee.

No. 03-10002

D.C. No.

CR-00-00193-KJD/LRL

Before: D.W. NELSON, KLEINFELD, and GOULD, Circuit Judges.

The memorandum disposition filed on January 25, 2005 is amended as follows:

On page 5 of the memorandum disposition, replace the paragraph beginning “Tanner argues that” with the following:

Because the Supreme Court's decision in United States v. Booker¹¹ changes the context in which district judges impose sentences, review of this sentence imposed under pre-Booker law is unnecessary. We remand so that the district judge can determine whether the change in the law would make a difference in the sentencing in this case. If the district judge determines that it does, he may vacate the sentence and resentence Tanner.

On page 6, replace "AFFIRMED." with the following:

AFFIRMED IN PART AND REMANDED.

Pursuant to Federal Rule of Appellate Procedure 40, any petitions for rehearing or rehearing en banc must be filed within 14 days of the filing of this order.

¹¹ United States v. Booker, 543 U.S. ___, ___ S.Ct. ___, 2005 WL 50108 (U.S. Jan. 12, 2005) (Nos. 04-104, 04-105).